

Application No.: 10/071,667

OSTEONICS 3.0-380

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Wang et al.

Application No.: 10/071,667

Group Art Unit: 3732

Filed: February 8, 2002

Examiner: Not Yet Assigned

For: POROUS METALLIC SCAFFOLD FOR
TISSUE INGROWTH

Commissioner for Patents
Washington, DC 20231

DECLARATION OF NICHOLAS NAI GUANG DONG AND MICHAEL MEEHAN

We, Nicholas Nai Guang Dong and Michael Meehan, declare and say that:

1. We are co-inventors of United States Patent Application No. 10/071,667 (the '667 application") filed in the United States Patent and Trademark Office on February 8, 2002.

2. We, Nicholas Nai Guang Dong and Michael Meehan, have signed a statutory declaration under 37 C.F.R. §1.63 on June 26 and 27, 2002, respectively.

3. We understand that one of the co-inventors of the '667 application, Kathy K. Wang, has refused to sign the statutory declaration and thus has refused to join in the application.

4. We declare that we had executed the statutory declaration, submitted herewith, on our own behalf and on behalf of the non-signing inventor, Kathy K. Wang.

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5. We declare that all statements, declarations, claims and assertions made in the statutory declaration were made on our own behalf and on behalf of the non-signing inventor, Kathy K. Wang.

6. We hereby declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and, further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated: 9/25/02

Nicholas Nai-Guang Dong
NICHOLAS NAI GUANG DONG

Dated: 9/27/02

Michael Meehan
MICHAEL MEEHAN

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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DECLARATION OF GREGORY E. PLASKON

I, Gregory E. Plaskon, declare and say that:

1. I am a Director of Intellectual Property for Howmedica Osteonics Corporation (hereinafter Osteonics), the assignee of the above-referenced United States Patent Application No. 10/071,667 (the '667 application"). My office is located at 59 Route 17 South, Allendale, New Jersey 07401. I submit this Declaration in connection with the proof required to establish that one of the three co-inventors of the '667 application, Kathy K. Wang, has refused to join in the application.

2. The '667 application resulted from research activities of scientists employed by Osteonics. Ms. Wang was an employee of Osteonics at its facility located at 300 Commerce Court, Mahwah, New Jersey 07430. Within the scope of her employment, Ms. Wang was involved in the research related to the subject matter of the '667 application. Ms. Wang left Osteonics' employment before the '667 application was filed.

3. I have a first-hand knowledge that, before she left Osteonics, Ms. Wang was well aware that a patent application would be filed for the subject matter related to her research activities. I also have a first-hand knowledge that Ms. Wang was aware that she would be named as an inventor in any such application. In fact, I have a first-hand knowledge that Ms. Wang communicated with the patent attorneys working on the preparation of a draft of such patent application.

4. I have a first-hand knowledge that, at the time Ms. Wang left Osteonics, she indicated that she does not intend to cooperate in filing and prosecution of this patent application that ultimately became the '667 application.

5. The '667 application was filed in the United States Patent and Trademark Office on February 8, 2002. Ms. Wang was named as one of the co-inventors.

6. By letter dated February 19, 2002, I presented Ms. Wang with a copy of the application papers as filed in the United States Patent and Trademark Office. A copy of the February 19 letter (without the enclosures) is attached (Attachment I). Enclosed with the February 19 letter were the specification, drawings, and claims of the '667 application.

7. On June 26, 2002, I sent another letter to Ms. Wang. A copy of the June 26 letter is attached (Attachment II). Enclosed with the June 26 letter were a statutory Declaration and an Assignment for the '667 application. In the letter, I requested that Ms. Wang sign the declaration and execute the assignment. The June 26 letter was sent via Federal Express to Ms. Wang's last known address/place of residence:

21 West Gate Road, Suffern, NY 10901. As seen from the attached tracking invoice (Attachment III), Ms. Wang received the letter on June 27, 2002.

8. After Ms. Wang was presented with the copy of the application and the statutory Declaration, I've attempted to contact her on a number of occasions to inquire whether she intends to sign the declaration. Thus, I called her on July 22, August 1, and August 7 of 2002. Copies of the memoranda that memorialize the calls are attached (Attachments (IV)).

9. I did not receive any response until August 16, 2002, when Ms. Wang left a message on my answering machine as follows: "Hi Greg: This is Kathy Wang. I got your messages and I believe that you know my position. O.K. Bye." I personally reviewed the message at the time it was received.

10. In view of Ms. Wang's previously stated intentions and my numerous attempts to contact her, the August 16 message was a clear indication that Ms. Wang will not cooperate with Osteonics with respect to the filing and prosecution of the '667 application, and that she does not intend to sign the statutory Declaration sent to her on June 26, 2002.

11. Ms. Wang's intentions were further confirmed when she sent me a letter (via fax) on September 12, 2002, a copy of which is attached (Attachment V). In the September 12 letter, Ms. Wang acknowledged her receipt of the Declaration (see §7 of this Declaration and Attachments II and III) and clearly indicated her refusal to sign. Accordingly, as of this time, Ms. Wang has refused to sign the Declaration, and thus, Ms. Wang has refused to join in the '667 application.

Application No.: 10/071,667

12. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and, further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated: 9/25/02



GREGORY E. PLASKON

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Howmedica
OSTEONICS

59 Route 17
Allendale, NJ 07401-1677
Phone: (201) 825-4900
Fax: (201) 934-4369

February 19, 2002

Ms. Kathy Wang
21 West Gate Road
Suffern, NY 10901

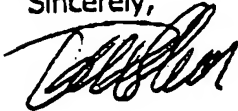
Dear Kathy:

Enclosed is a copy of the foam metal patent as submitted to the United States Patent and Trademark Office on February 8, 2002.

I will forward assignment documentation in the future for your execution and keep you updated on the status of this application as a matter of courtesy.

Please contact me if you would like to discuss the application. I can be reached at 201-760-8170.

Sincerely,



Greg Plaskon
Director, Intellectual Property

Enclosure

COPY

stryker
Howmedica
OSTEONICS

59 Route 17 South
Alendale, NJ 07401

June 26, 2002

Kathy K. Wang
21 West Gate Road
Suffern, New York 10901

Dear Kathy:

I hope your doing well these days and either enjoying the time off or have found new opportunities that are fulfilling and enjoyable.

Kathy, enclosed are two forms associated with the Foam Metal patent application I need completed and sent back to my attention. Enclosed is a self-addressed envelope with postage attached.

I'm sure you are familiar with both forms. The first is an Assignment of Utility Application that requires your signature and that of a Notary Public. The second form is a Declaration form that only needs your signature.

We could make arrangements for a Notary to come to your home and witness your signature and sign Assignment form if you wish. Please contact me at 201-760-8170 if you require such assistance or have any questions.

Best of luck,

Greg Plaskon

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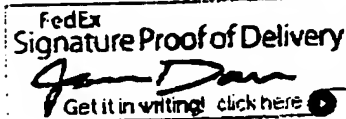
Tracking Number 603367316034
Reference Number DANAYAN-300 SEQUEA
Ship Date 06/26/2002
Delivered To
Delivery Location SUFFERN NY
Delivery Date/Time 06/27/2002 10:10
Signed For By KATHY WANG
Service Type Priority Letter

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July 22, 2002

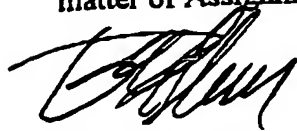
I called Kathy Wang today and left a message regarding the documentation (Assignment and Power of Attorney forms) sent to her on June 27, 2002. I asked her to call me back to discuss the status.

A handwritten signature in black ink, appearing to read 'G. Plaskon', with a stylized flourish at the end.

Greg Plaskon

August 1, 2002

I tried to call Kathy Wang again today at 9:30 A.M. Kathy was not home, but I left a follow-up message to my July 22 message. I asked her to contact me to discuss the matter of Assignment and Declaration.



Greg Plaskon

✓

Kathy Wang
845-369-0125

Howmedica Osteonics

To:	Ray Augustin	Fax:	908-654-7866
From:	Greg Plaskon	Date:	8/7/2002
Re:	Kathy Wang Employment Agreement	Pages:	10 including this cover sheet

Ray:

Here is the latest agreement signed just prior to the merger. Kathy did not have any other termination agreements, but HR informed me that they followed-up by sending her a copy of this agreement just after her departure.

I'm also sending a letter I sent to Kathy with the patent application back in February, just after we filed with the USPTO. Lastly, you will find a letter and FedEx information from when I sent the Declaration and Assignment documentation.

I called Kathy again today at 3:30 and left yet another message.

Call me if you need any additional information.

Thanks,



Greg

Dr. Kathy K. Wang
21 West Gate Rd.
Suffern, NY 10901

September 12, 2002

Mr. Greg Plaskon
Howmedica Osteonics
59 Route 17
Ailendale, NJ 07401

Dear Greg,

I can not sign the two forms that were mailed to me along with your letter (not dated).

If the management of Howmedica Osteonics respected me as the original and first inventor for the Foam Metal technology, they would have offered me sufficient time to review the patent before submission to the U.S. Patent Office on February 8th.

My signature is not free. Since I have not reviewed the patent, I can not lie and sign my name. Legal action will be taken if you report to patent office that I have reviewed and understand the contents of the patent entitled "Porous Metallic Scaffold for Tissue Ingrowth" or you deny my existence as the first inventor for the Foam Metal patent.

Sincerely,

A handwritten signature in black ink, appearing to be 'Kw' or 'Kw Wang', written in a cursive style.

Kathy K. Wang, Ph.D.